

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Donna Mooney
Acting City Attorney

Lara Weisiger
City Clerk

Lisa Goldman
Acting City Manager

Date: January 4, 2011

Re: Transmittal of the Sunshine Task Force Proposed Sunshine and Campaign
Finance Reform Ordinances

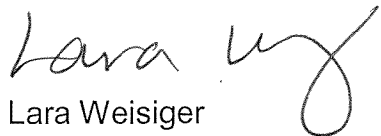
At its June 2, and November 17, 2009 meetings, the City Council addressed formation of a Sunshine Task Force following a referral brought forward by Councilmember Tam on April 21, 2009. The City Council appointed members to the Sunshine Task Force on February 16, 2010. In addition, on June 15, 2010, the City Council sent the proposed Campaign Finance Reform Ordinance to the Task Force for review. The Sunshine Task Force held its final meeting on December 9, 2010.

The proposed Sunshine Ordinance is on file in the City Clerk's Office. Herewith attached is the proposed Campaign Finance Reform ordinance. The Task Force members chose not to have a cover memo accompany transmittal of the ordinances.

Respectfully submitted,



Donna Mooney
Acting City Attorney



Lara Weisiger
City Clerk



Lisa Goldman
Acting City Manager

Exhibit:

1. Proposed Sunshine Ordinance – on file in the City Clerk's Office
2. Proposed Campaign Finance Reform Ordinance

CITY OF ALAMEDA ORDINANCE NO. _____
New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING SECTION 2-71 (ELECTION CAMPAIGN CONTRIBUTIONS) TO ARTICLE VI. (ELECTIONS) OF CHAPTER II (ADMINISTRATION) TO CREATE ENFORCEABLE LIMITS ON ELECTION CONTRIBUTIONS TO FACILITATE LOCAL CAMPAIGN FINANCE REFORM AND PROMOTE BROADER AND MORE OPEN CITIZEN PARTICIPATION IN THE ELECTORAL PROCESS

BE IT ORDAINED by the City Council of the City of Alameda that:

Section 1. The Alameda Municipal Code is amended by adding Section 2-71 (Election Campaign Contributions) to Article VI, (Elections) of Chapter II (Administration), which shall read as follows:

2-71 ELECTION CAMPAIGN CONTRIBUTIONS

2-71.1 Purpose.

Pursuant to the authority granted to the City Council in Government Code Section 81013 permitting the imposition of additional local requirements to the Political Reform Act of 1974, the City Council hereby finds that monetary contributions to political campaigns are a legitimate form of participation in our political process, but the financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates. The City Council further finds that it is in the public interest to place realistic and enforceable limits on the amounts which may be contributed to political campaigns in municipal elections, and that candidates and treasurers of committees aiding such candidates make a full and fair declaration containing a disclosure of the persons making contributions, the amounts of such contributions, the persons to whom expenditures are made, and the amounts of such expenditures.

In seeking to establish such limitations on campaign contributions, it is the intent of the City Council to prevent corruption, and the appearance of corruption in the electoral process. It is not intended that such limitations should act to deprive or restrict any citizen of his or her rights guaranteed under the First and Fourteenth Amendments of the United States Constitution.

It is further the intent of the City Council to insure that individuals and interest groups in Alameda have a fair and equal opportunity to

**City Council
Exhibit 1 to
Agenda Item #3-D
01-04-11**

participate in municipal elective and governmental purposes; to provide a neutral source of campaign financing in the form of limited public matching funds; to increase the value to candidates of smaller contributions; to eliminate fundraising except during an election cycle; and to allow candidates and officeholders to spend a lesser proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents.

2-71.2

Definitions.

For the purpose of this section, definitions codified in the Political Reform Act, beginning at Section 82000 et seq. shall apply, with the additions of subsection (c) of this section and the following additional requirements to subsections (a) and (b) of this section:

(a) "Campaign statement" means an itemized statement prepared in duplicate by a candidate and by the treasurer of each committee, showing, in addition to matters required by law, the following information:

1. The name, complete mailing address, occupation and place of employment, and business address if self employed, of any person who paid, loaned, contributed or otherwise furnished \$100.00 or more, or its equivalent, to the candidate or treasurer for the candidate, or to each committee as defined in subsection (b) of this section, for the use of such candidate or such treasurer, directly or indirectly, in aid of the candidate's election, or for qualification, passage or defeat of any measure, and the amount, in detail, of such money or its equivalent each such person paid, loaned, contributed or otherwise furnished;
2. The purchase of any tickets cumulatively totaling \$100.00 or more, for any fundraising event, regardless of number purchased, value of each ticket, or frequency of purchase, is subject to the provisions of subsection (a)(1) of this section;
3. The donation of \$100.00 or more to any "kitty" at the campaign event is subject to the provisions of subsection (a)(1) of this section; and
4. All expenditures of \$100.00 or more shall be itemized in detail, with the amount and names of persons and/or concerns where the moneys were expended.

(b) "Committee" means:

1. A committee, person or group of persons organized for the purpose or charged with the duty of conducting or aiding the election campaign, including fundraising events, or any candidate for municipal office of the city,

or for the support or defeat of a measure under consideration in the City;

2. Any committee, person or group of persons aiding, directly or indirectly, any candidate, measure or committee, as defined in subsection (b)(1) of this section, whether or not originally organized for election purposes.

(c) "Election period" means:

1. For each general municipal election held in November every two years to elect, as the case may be, a mayor, councilmember, auditor or treasurer, the election period means the period beginning on January first preceding the November general municipal election for the affected office and ending on December thirty-first after the next following (and current) general municipal election for the affected office.

For each special municipal election, held to fill a vacancy in the office of mayor or councilmember, the election period means the period beginning on the day the vacancy began and ending on the sixtieth day following the special municipal election. However, for any candidate in the special election who has established, prior to the vacancy, a committee for the election to the affected office of mayor or councilmember, the election period shall begin no more than ten months prior to the special municipal election.

2-71.3

Contributions – Restrictions generally.

- (a) No contribution shall be accepted by any candidate or committee except during an election period.
- (b) No candidate or committee shall accept any contribution or contributions (including loans and non-monetary) from a single source, which exceed the aggregate amount of \$500.00 during any election period. This amount shall be adjusted by the Consumer Price Index for the San Francisco-Oakland metropolitan area (??) in each regular election period to account for inflation.
- (c) Return of Excess Contributions. If the contribution limitation set forth in subsection (b) of this section is exceeded, the candidate must, within 15 days after receipt, return to the contributor the excess amount in monetary value form.
- (d) Limits Applied Separately. The candidate contribution limit of subsection (b) of this section applies to each person. Therefore, a husband and wife may each make contributions up to the specified limit, including contributions made from shared or community property. When a husband or wife makes a contribution to a candidate or committee, using a joint

checking account or other instrument, the contribution will apply to the spouse signing the check.

- (e) Nothing in this section shall limit the amount which a candidate may contribute to his or her campaign for an elected City office.
- (f) The prohibitions stated in subsection (b) of this section shall not apply to contributions made or received in support of, or in opposition to, a ballot measure.
- (g) The contribution limits of this subsection 2-71.3, or any other provision of 2-71, shall not limit independent expenditures.

2-71.35 One campaign committee and one checking account per candidate for City office

Except as may be otherwise provided by state law, a candidate shall have no more than one (1) campaign committee and one (1) checking account out of which all expenditures shall be made. This section shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

2-71.4 Filing of verified campaign expenditures statement.

- (a) To ensure full disclosure, each committee or its treasurer shall disclose all expenditures on behalf of the candidate to the candidate or his or her treasurer not later than one business day after the expenditure.
- (b) Cumulative preliminary campaign statements shall be filed by the following dates by the candidate and each committee:
 - 1. The 5th and 20th days of each month, after the filing deadline has passed; these reports close on the last day of the prior month and 15th of the same month, respectively.
 - 2. An additional final contributions Recipient Committee Campaign statement shall be filed with the City Clerk during regular business hours on the Friday preceding the election; this report closes at 2:00 p.m. on the date of filing. This report is in addition to the reports required to be filed under state law in Government Code Section 84200;
 - 3. Any contribution of \$500 must be reported within 24 hours of its receipt.
 - 4. The final post-election campaign statement will be filed not later than January 31st of the year following the election in accordance with the provisions of the Political Reform Act. In the event that the date of the City election changes, the final post-election report shall be filed on a semi-annual basis in accordance with the provisions of the Political Reform Act;

5. Filing must be received by the City Clerk by 5:00 p.m., and is not accomplished by depositing in the mail;
 6. Each committee supporting or opposing a measure shall file its expenditure reports in accordance with the provisions of the Political Reform Act.
- (c) Publication of contributions prior to elections. The City shall publish on its website at least once in the seven days before each municipal election a list of all persons contributing \$100.00 or more to any candidate or committee in that election and the amounts of the contributions reported through the filing deadline for the third pre-election statement.
- (d) Any person, committee or group that disseminates election material related to a campaign for local office or issue, shall be required to file the expenditure reports mentioned above.

2-71.X

Voluntary Campaign Expenditure limits

- (a) After the candidate filing deadline has passed, the City will provide space in a special election page on the City's Website for each qualifying candidate for candidate information; provided the candidate has filed a Voluntary Election Campaign Spending Limit agreement with the City Clerk. The page will include qualifying candidates' photographs, names, ballot designations, contact information, and a link to the candidate's website. No candidate may include within his or her statement the name of another candidate, committee, or other person or entity unless that candidate shall have previously obtained the written authorization of the candidate, committee, other person or entity, or the candidate committee's or other entity's designated agent's authorization to use such reference within the statement. The order of the photographs and candidates' statements shall be the same as the ballot order as determined by the Secretary of State's drawing of a randomized alphabet for the applicable election. The special election page shall contain the website address of any non-partisan election website maintained by organizations that do not endorse or oppose candidates, that covers Alameda City Council elections, and provides equal access to all candidates. Qualifying Candidates' information for inclusion on the website must be filed with the City Clerk by the nomination filing deadline for the City Council election to which it applies.
- (b) Eligible candidates include those running for Mayor, City Council, Auditor or Treasurer. The spending limits for each office, which shall be adjusted according to the San Francisco-Oakland metropolitan area Consumer Price Index, shall be:

Mayor: \$35,000
City Council: \$25,000

Auditor: \$25,000
Treasurer: \$25,000

- 2-71.5 **Contractors doing business or proposing to do business with the City of Alameda (City), the Community Improvement Commission (CIC), the Alameda Reuse and Redevelopment Authority (ARRA) or the Alameda Housing Authority (AHA) prohibited from making contributions.**
- (a) For purposes of this subsection 2-71.5 "Alameda agency" shall mean the City, CIC, ARRA, and AHA.
 - (b) No person who contracts or proposes to contract with the Alameda agency, who amends or proposes to amend such a contract with the Alameda agency, for any purpose including but not limited to contracts for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the Alameda agency, for the selling of any land or building to the Alameda agency, or for the purchasing of any land or building from the Alameda agency, whenever the value of such transaction would require approval by the Alameda agency legislative body, shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, the City Auditor, a candidate for City Auditor, City Treasurer, a candidate for City Treasurer, or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.
 - (c) Contracts with the Alameda agency excludes existing and future Memoranda of Understanding between the agency and its employees.
 - (d) "Services" means and includes labor services, professional services, consulting services, or a combination of services and materials, supplies, commodities and equipment which shall include public works projects.
 - (e) For contributions to City officers, transactions that require approval by the Alameda agency legislative body.
 - (f) "Commencement of negotiations" for Alameda agency contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed City officer or employee or when any elected or appointed City office or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.
 - (g) "Commencement of negotiations" does not include requests to be placed on mailing lists or routine inquiries for information about a particular contract, request for proposal or any information or

documents relating to them or attendance at an informational meeting.

- (h) "Completion of negotiations" occurs when the Alameda agency executes the contract or amendment.
- (i) "Termination of negotiations" occurs when the contract or amendment is not awarded to the contractor or when the contractor files a written withdrawal from the negotiations, which is accepted by an appointed or elected Alameda agency officer or employee.
- (j) The City Manager shall be responsible for implementing procedures for the Alameda agency contracts to ensure contractor compliance with this Ordinance. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:

The Alameda Municipal Code limits campaign contributions and prohibits contributions from any person contracting with the City of Alameda, the CIC, the ARRA or the AHA during specified time periods. Violators are subject to civil and criminal penalties.

I have read Alameda Municipal Code Section 2-71.5, and certify that I/we have not knowingly, nor will I/we make contributions prohibited thereby.

Business Name

Date

Signature

The signed and dated statement must be received and filed by the City Clerk at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification.

- (i) A person who contracts with the City, CIC, ARRA or the AHA, for any purpose, including, but not limited to contracts for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, CIC, ARRA, or the AHA, or for selling any land or building to the City, CIC, ARRA or the AHA or for purchasing any land or building from the City, CIC, ARRA or the AHA, whenever the value of such transaction would require approval by the City Council, the CIC, ARRA or the AHA, and who violates subsection (a) of this section, shall be subject to the enforcement provisions of this Section.
- (j) Elected City officeholders, candidates for City office and their controlled committees shall include a notice on all campaign fundraising materials no less than eight point boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

Alameda Municipal Code Section 2-71 limits campaign contributions by all persons and prohibits contributions during specified time periods from any person contracting with the City of Alameda, CIC, ARRA or AHA.

2-71.6

Enforcement – Violations; criminal.

- (a) Any person who knowingly or willfully violates any provision of this Ordinance is guilty of a misdemeanor.
- (b) No person convicted of a misdemeanor under this subsection shall be a candidate for an elected City Council office for a period of four years following the date of the conviction unless the court at the time of sentencing specifically determines that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for purposes of this subsection.
 - 1. Violation – Candidate's office forfeited when. If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this Ordinance, the office of such candidate shall be forfeited and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office.
 - 2. Violation – Candidacy terminated when. If a candidate receives a final judgment of conviction pursuant to this subsection at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election.
- (c) In addition to other penalties provided by law, a fine up to the greater of one thousand dollars (\$1000.00) or three times the amount the person failed to report properly, unlawfully contributed, gave or received may be imposed upon conviction of each violation.
- (d) Prosecution for a violation of this Ordinance must be commenced within four years after the date on which the violation occurred.
- (e) Whether or not a violation is inadvertent, the presence or absence of good faith shall be considered in applying the remedies and sanctions of this subsection.
- (f) If two or more persons are responsible for any violation, they shall be jointly and severally liable.

2-71.7

Enforcement – Injunction.

Any person residing in the City may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Ordinance. The court may, in its discretion, require the plaintiff to file a complaint with the district attorney prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails his costs of litigation, including reasonable attorney's fees.

2-71.8

Enforcement – Civil liability.

- (a) Any person who violates any provision of this Ordinance shall be liable in a civil action brought by either the district attorney or independent counsel, appointed by the City Attorney, for an amount up to one thousand dollars (\$1,000) per violation of this section, in addition to return of contributions received in violation thereof.
- (b) No civil action alleging a violation of this section may be filed against a person pursuant to this section if a criminal prosecution arising out of the same allegations is pending.
- (c) Late filing penalties. Any candidate or committee who files a campaign statement or report after the deadlines imposed by the Political Reform Act and by this Ordinance shall, in addition to the penalties enumerated in California Government Code Section 91013, be subject to the penalties and/or remedies established herein/or, by this subsection.
- (c) Any candidate who has met one of the eligibility requirements and has executed and filed an executed Voluntary Election Campaign Spending Limit Agreement with the City Clerk and who makes one or more election campaign expenditures in excess of the spending limit set forth in the Agreement shall be liable to the City for such violation(s) in an amount equal to twice the total amount of all such expenditures which are in excess of the agreed to spending limit.

Section 2. This ordinance shall be in full force and effect from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by Council of the City of Alameda in regular meeting assembled on the _____ day of _____, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____ day of _____, 2010.

Lara Weisiger, City Clerk
City of Alameda